

91st CONGRESS
1ST SESSION

S. 2600

IN THE SENATE OF THE UNITED STATES

JULY 11, 1969

Mr. HRUSKA (for himself, Mr. DIRKSEN, and Mr. THURMOND) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Bail Reform Act of 1966 to authorize consideration of danger to the community in setting conditions of release, to provide for pretrial detention of dangerous persons, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That section 3146 of title 18, United States Code, is amended
4 as follows:

5 (a) by inserting in subsection (a) the words "or
6 the safety of any other person or the community" (1)
7 after "as required" in the first sentence and (2) after
8 "for trial" in the second sentence;

9 (b) by adding the following sentence at the end

1 of subsection (a) : “No financial condition may be im-
2 posed to assure the safety of any other person or the
3 community.”;

4 (c) by amending subsection (b) to read as follows:

5 “(b) In determining which conditions of release, if
6 any, will reasonably assure the appearance of a person as re-
7 quired and the safety of any other person or the community,
8 the judicial officer shall, on the basis of available informa-
9 tion, take into account such matters as the nature and cir-
10 cumstances of the offense charged, the weight of the evidence
11 against such person, his family ties, employment, financial
12 resources, character and mental conditions, past conduct,
13 length of residence in the community record of convictions,
14 and any record of appearance at court proceedings or of
15 flight to avoid prosecution or failure to appear at court pro-
16 ceedings.”

17 (d) by deleting the period at the end of subsection
18 (c), and adding “, and shall warn such person of the
19 penalties provided in section 3150A of this title.”; and

20 (e) by adding a new subsection:

21 “(h) The following shall be applicable to any person
22 detained pursuant to this chapter:

23 “(1) The person shall be confined, to the extent prac-
24 ticable, in facilities separate from convicted persons awaiting
25 or serving sentences or being held in custody pending appeal.

1 “(2) The person shall be afforded reasonable opportu-
2 nity for private consultation with counsel and, for good cause
3 shown, shall be released upon order of the judicial officer
4 in the custody of the United States marshal or other appro-
5 priate person for limited periods of time to prepare defenses,
6 or for other proper reasons.

7 SEC. 2. Chapter 207 of title 18, United States Code, is
8 amended by adding after section 3146 the following new
9 sections:

10 **“§ 3146A. Pretrial detention in certain noncapital cases**

11 “(a) Whenever a judicial officer determines that no
12 condition or combination of conditions of release will reason-
13 ably assure the safety of any other person or the community,
14 he may, subject to the provisions of this section, order pre-
15 trial detention of a person charged with:

16 “(1) a dangerous crime as defined in section 3152
17 (3) of this title;

18 “(2) a crime of violence, as defined in section
19 3152 (4) of this title, allegedly committed while on bail
20 or other release, or probation, parole or mandatory re-
21 lease pending completion of a sentence, if the prior
22 charge is a crime of violence, or if the person has been
23 convicted of a crime of violence within the ten-year
24 period immediately preceding the alleged commission
25 of the present offense; or

1 “(3) an offense who, for the purpose of obstruct-
2 ing or attempting to obstruct justice, threatens, injures,
3 intimidates, or attempts to threaten, injure, or intimidate
4 any prospective witness or juror.

5 “(b) No person described in subsection (a) of this
6 section shall be ordered detained unless the judicial officer—

7 “(1) holds a pretrial detention hearing in accord-
8 ance with the provisions of subsection (c) of this sec-
9 tion;

10 “(2) finds that—

11 “(A) there is clear and convincing evidence
12 that the person is a person described in subsection
13 (a) of this section;

14 “(B) based on the factors set out in subsection
15 (b) of section 3146 of this title, there is no condi-
16 tion or combination of conditions of release which
17 will reasonably assure the safety of any other person
18 or the community; and

19 “(C) except with respect to a person described
20 in subparagraph (3) of subsection (a) of this sec-
21 tion, on the basis of information presented to the
22 judicial officer, there is a substantial probability that
23 the person committed the offense for which he is
24 present before the judicial officer; and

1 “(3) issues an order of detention accompanied by
2 written findings of fact and the reasons for its entry.

3 “(c) The following procedures shall apply to pretrial
4 detention hearings held pursuant to this section:

5 “(1) Whenever the person is before a judicial officer,
6 the hearing may be initiated on oral motion of the United
7 States attorney.

8 “(2) Whenever the person has been released pursuant
9 to section 3146 of this title and it subsequently appears that
10 such person may be subject to pretrial detention, the United
11 States attorney may initiate a pretrial detention hearing by ex
12 parte written motion. Upon such motion the judicial officer
13 may issue a warrant for the arrest of the person and such per-
14 son shall be brought before a judicial officer in the district
15 where he is arrested. He shall then be transferred to the dis-
16 trict in which his arrest was ordered for proceedings in
17 accordance with this section.

18 “(3) The pretrial detention hearing shall be held imme-
19 diately upon the person being brought before the judicial
20 officer for such hearing unless the person or the United States
21 attorney moves for a continuance. A continuance granted on
22 motion of the person shall not exceed five calendar days, in
23 the absence of extenuating circumstances. A continuance on

1 motion of the United States attorney shall be granted upon
2 good cause shown and shall not exceed three calendar days.

3 The person may be detained pending the hearing.

4 “(4) The person shall be entitled to representation by
5 counsel and shall be entitled to present information, to testify,
6 and to present and cross-examine witnesses.

7 “(5) Information stated in, or offered in connection
8 with, any order entered pursuant to this section need not
9 conform to the rules pertaining to the admissibility of evi-
10 dence in a court of law.

11 “(6) Testimony of the person given during the hearing
12 shall not be admissible on the issue of guilt in any other
13 judicial proceeding, but such testimony shall be admissible in
14 proceedings pursuant to sections 3150, 3150A, and 3150B
15 of this title, in perjury proceedings, and as impeachment in
16 any subsequent proceedings.

17 “(7) Appeals from orders of detention may be taken
18 pursuant to section 3147 of this title.

19 “(d) The following shall be applicable to persons de-
20 tained pursuant to this section:

21 “(1) To the extent practicable, the person shall be
22 given an expedited trial.

23 “(2) Any person detained shall be treated in accordance
24 with section 3146 of this title—

1 “(A) upon the expiration of sixty calendar days,
2 unless the trial is in progress or the trial has been de-
3 layed at the request of the person; or

4 “(B) whenever a judicial officer finds that a sub-
5 sequent event has eliminated the basis for such detention.

6 “(3) The person shall be deemed detained pursuant to
7 section 3148 of this title if he is convicted.

8 “(e) The judicial officer may detain for a period not to
9 exceed five calendar days a person who comes before him
10 for a bail determination charged with any offense, if it appears
11 that such person is presently on probation, parole, or manda-
12 tory release pending completion of sentence for any offense
13 under State or Federal law and that such person may flee or
14 pose a danger to any other person or the community if re-
15 leased. During the five-day period, the United States attor-
16 ney or the Corporation Counsel for the District of Columbia
17 shall notify the appropriate State or Federal probation or
18 parole officials. If such officials fail or decline to take the
19 person into custody during such period, the person shall be
20 treated in accordance with section 3146 of this title, unless
21 he is subject to detention pursuant to this section. If the per-
22 son is subsequently convicted of the offense charged, he
23 shall receive credit toward service of sentence for the time
24 he was detained pursuant to this subsection.”

1 “§ 3146B. Pretrial detention for certain persons addicted
2 to narcotics

3 “(a) Whenever it appears that a person charged with
4 a crime of violence, as defined in section 3152 (4) of this
5 title, may be an addict, as defined in section 3152 (5) of this
6 title, the judicial officer may, upon motion of the United
7 States attorney, order such person detained in custody for a
8 period not to exceed three calendar days, under medical
9 supervision, to determine whether the person is an addict.

10 “(b) Upon or before the expiration of three calendar
11 days, the person shall be brought before a judicial officer and
12 the results of the determination shall be presented to such
13 judicial officer. The judicial officer thereupon (1) shall treat
14 the person in accordance with section 3146 of this title, or
15 (2) upon motion of the United States attorney, may (A)
16 hold a hearing pursuant to section 3146A of this title, or (B)
17 hold a hearing pursuant to subsection (c) of this section.

18 “(c) A person who is an addict may be ordered de-
19 tained in custody under medical supervision if the judicial
20 officer:

21 “(1) holds a pretrial detention hearing in accord-
22 ance with subsection (c) of section 3146A of this title;

23 “(2) finds that—

24 “(A) there is clear and convincing evidence
25 that the person is an addict;

1 “(B) based on the factors set out in subsection
2 (b) of section 3146 of this title, there is no condition
3 or combination of conditions of release which will
4 reasonably assure the safety of any other person or
5 the community; and

6 “(C) on the basis of information presented to
7 the judicial officer, there is a substantial probability
8 that the person committed the offense for which he
9 is present before the judicial officer;

10 and

11 “(3) issues an order of detention accompanied by
12 written findings of fact and the reasons for its entry.

13 “(d) The provisions of subsection (d) of section 3146A
14 of this title shall apply to this section.”

15 SEC. 3. Section 3147 of title 18, United States Code,
16 is amended:

17 (a) by changing the title to read:

18 **“§ 3147. Appeals from conditions of release or orders of**
19 **pretrial detention.”**

20 (b) by adding after the phrase “the offense
21 charged,” in subsection (b) the phrase “or (3) a person
22 is ordered detained or an order of detention has been
23 permitted to stand by a judge of the court having original
24 jurisdiction over the offense charged”.

1 SEC. 4. Section 3148 of title 18, United States Code, is
2 amended by striking out the last sentence and adding “The
3 provisions of section 3147 shall apply to persons described
4 in this section.”

5 SEC. 5. Section 3150 of title 18, United States Code, is
6 amended:

7 (a) by adding the letter “(a)” before the word
8 “Whoever”.

9 (b) by inserting the phrase “or prior to surrender
10 to commence service of sentence” (1) after the word
11 “chapter” and (2) after the word “certiorari”;

12 (c) by deleting the phrase “or imprisoned not more
13 than five years” and inserting in lieu thereof the phrase
14 “and imprisoned not less than one year and not more
15 than five years”;

16 (d) by deleting the phrase “or imprisoned for not
17 more than one year” and inserting in lieu thereof the
18 phrase “and imprisoned not less than ninety days and
19 not more than one year”; and

20 (e) by adding at the end thereof the following new
21 subsections:

22 “(b) Any failure to appear after notice of the appear-
23 ance date shall be prima facie evidence that such failure to
24 appear is willful. Whether the person was warned when
25 released of the penalties for failure to appear shall be a fac-

1 tor in determining whether such failure to appear was will-
2 ful, but the giving of such warning shall not be a prerequisite
3 to conviction under this section.

4 “(c) The trier of facts may convict under this section
5 even if the defendant has not received actual notice of the
6 appearance date if (1) reasonable efforts to notify the de-
7 fendant have been made and (2) the defendant, by his own
8 actions, has frustrated the receipt of actual notice.

9 “(d) Any term of imprisonment imposed pursuant to
10 this section shall be consecutive to any other sentence of
11 imprisonment.”

12 SEC. 6. Chapter 207 of title 18, United States Code,
13 is amended by adding after section 3150 the following new
14 sections:

15 **“§ 3150A. Added penalties for crimes committed while on**
16 **release**

17 “Any person convicted of an offense committed while
18 released pursuant to section 3146 of this title shall be subject
19 to the following penalties in addition to any other applicable
20 penalties:

21 “(1) a term of imprisonment of not less than one
22 year and not more than five years if convicted of com-
23 mitting a felony while released; and

24 “(2) a term of imprisonment of not less than ninety
25 days and not more than one year if convicted of com-
26 mitting a misdemeanor while released.

1 “The giving of a warning to the person when released
2 of the penalties imposed by this section shall not be a pre-
3 requisite to conviction under this section.

4 “Any term of imprisonment imposed pursuant to this
5 section shall be consecutive to any other sentence of
6 imprisonment.

7 **“§ 3150B. Sanctions for violation of release conditions**

8 “(a) A person who has been conditionally released
9 pursuant to section 3146 of this title and who has violated
10 a condition of release shall be subject to revocation of release
11 and an order of detention and to prosecution for contempt of
12 court.

13 “(b) Proceedings for revocation of release may be
14 initiated on motion of the United States attorney. A warrant
15 for the arrest of a person charged with violating a condition
16 of release may be issued by a judicial officer and such person
17 shall be brought before a judicial officer in the district where
18 he is arrested. He shall then be transferred to the district in
19 which his arrest was ordered for proceedings in accordance
20 with this section. No order of revocation and detention shall
21 be entered unless, after a hearing, the judicial officer finds
22 that—

23 “(1) there is clear and convincing evidence that
24 such person has violated a condition of his release; and

25 “(2) based on the factors set out in subsection (b)

1 of section 3146 of this title there is no condition or com-
2 bination of conditions of release which will reasonably
3 assure that such person will not flee or pose a danger to
4 any other person or the community.

5 The provisions of subsections (c) and (d) of section 3146A
6 of this title shall apply to this subsection.

7 “(c) Contempt sanctions may be imposed if, upon a
8 hearing and in accordance with principles applicable to
9 proceedings for criminal contempt, it is established that such
10 person has intentionally violated a condition of his release.
11 Such contempt proceedings shall be expedited and heard
12 by the court without a jury. Any person found guilty of
13 criminal contempt for violation of a condition of release shall
14 be imprisoned for not more than six months, or fined not
15 more than \$1,000, or both.

16 “(d) Any warrant issued by a judge of the District
17 of Columbia Court of general sessions for violation of re-
18 lease conditions or for contempt of court, for failure to appear
19 as required, or pursuant to subsection (c) (2) of section
20 3146A of this title, may be executed at any place within the
21 jurisdiction of the United States. Such warrants shall be
22 executed by a United States marshal or by any other officer
23 authorized by law.”

24 SEC. 7. Section 3152 of title 18, United States Code, is
25 amended by adding the following new paragraphs:

1 “(3) The term ‘dangerous crime’ means (1) taking or
2 attempting to take property from another by force or threat
3 of force, (2) unlawfully breaking and entering or attempting
4 to break and enter any premises adapted for overnight accom-
5 modation of persons or for carrying on business with the
6 intent to commit an offense therein, (3) arson or attempted
7 arson of any premises adapted for overnight accommodation
8 of persons or for carrying on business, (4) rape, carnal
9 knowledge of a female under the age of sixteen, assault with
10 intent to commit either of the foregoing offenses, or taking or
11 attempting to take immoral, improper or indecent liberties
12 with a child under the age of sixteen years, or (5) unlawful
13 sale or distribution of a narcotic or depressant or stimulant
14 drug, as defined by any Act of Congress and if the offense is
15 punishable by imprisonment for more than one year.

16 “(4) The term ‘crime of violence’ means murder, rape,
17 carnal knowledge of a female under the age of sixteen, taking
18 or attempting to take immoral, improper or indecent liberties
19 with a child under the age of sixteen years, mayhem, kid-
20 naping, robbery, burglary, voluntary manslaughter, extor-
21 tion or blackmail accompanied by threats of violence, arson,
22 assault with intent to commit any offense, assault with a
23 dangerous weapon, or an attempt or conspiracy to commit
24 any of the foregoing offenses, as defined by any Act of Con-

1 gress or any State law, if the offense is punishable by impris-
2 onment for more than one year.

3 “(5) The term ‘addict’ means any individual who
4 habitually uses any narcotic drug as defined by section 4731
5 of the Internal Revenue Code of 1954, as amended, so as
6 to endanger the public morals, health, safety, or welfare.”

7 SEVERABILITY

8 SEC. 8. If a provision of this Act is held invalid, all
9 valid provisions which are severable shall remain in effect.
10 If a provision of this Act is held invalid in one or more of
11 its applications, the provision shall remain in effect in all
12 its valid applications.

91ST CONGRESS
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S. 2600

A BILL

To amend the Bail Reform Act of 1966 to authorize consideration of danger to the community in setting conditions of release, to provide for pretrial detention of dangerous persons, and for other purposes.

By Mr. HRUSKA, Mr. DIRKSEN, and
Mr. THURMOND

JULY 11, 1969

Read twice and referred to the Committee on the
Judiciary

7/21/69

Brief Analysis of Nixon Crime Bills

There are two proposed bills involved, S.2600 (15 pages) which is nationwide and would amend the Bail Reform Act of 1966 to allow pre-trial detention, and S.2601 (322 pages), which completely revises the Court system and the Court procedures in the District of Columbia, with particular emphasis on criminal procedures.

(preventive detention) S.2600 simply allows a judge to confine a person prior to trial if the judge finds that he may be a danger to the safety of any other person or to the community, provided that he also finds one of several other conditions generally relating to the requirement that the crime with which he is charged be a dangerous crime or one involving violence. In the hearing on pretrial detention, the rules of evidence may be disregarded and hearsay and other such evidence used.

S. 2601 does a number of things. First, it authorizes a "Superior Court" to replace the Court of General Sessions. This Superior Court will have fifty Judges. The ^{powers} ~~force~~ of the U. S. Court of Appeals to review decisions of the District Courts are almost eliminated (section 11-301) and in its stead is the Court of Appeals for the District of Columbia, which currently has six judges, is increased to nine and has general review power over all of the Superior Court decisions. The present six judges of the District of Columbia Court of Appeals are considered to be quite conservative, and include Frank Nebekker, a very conservative Assistant U. S. Attorney just appointed by President Nixon.

The Bill contains an extremely broad wiretap section which roughly follows the national wiretap law. In effect, the police and

of America to receive the highest of the British Order of Merit.

For the district of Columbia, which currently has six judges, is represented by nine and has formerly twice more out of the

... of the ...

Federal Agents are given open ended authority to indiscriminately wiretap or bug in anyway they see fit. This is true because the initial section of the Act explicitly exempts them from its coverage. The initial section of the Act (Section 23-541 (4)(a)).

A Judicial Commission of seven members is created (Section 11-1521) which has the power to suspend, retire or remove a District of Columbia judge. (This does not include Judges of the U. S. District Court and the U. S. Court of Appeals. The Commission consists of seven members appointed by the President and has the power among other things to act against Judges based upon "conduct which is prejudicial to the administration of the justice or which brings the judicial office into disrepute." (Section 11-1526). This open-ended power can of course be used for many purposes. Moreover the decision of the Commission is only appealable to a special 3-judge tribunal appointed by the Chief Justice of the U.S. (i.e., Warren Burger) (Section 11-1529). The new D. C. Court of Appeals has full power to review decisions of the city council, the Mayor, and other municipal agencies. (Section 17-313).

The section of the Bill (Section 907 (a) provides that upon the commission of a third felony, a person can be subject^{ed} to the lifetime supervision of the Court -- i.e., put in jail for life.

General Jones was given upon which to act. This is true because the
witness or dug in anyway they see fit. This is true because the
initial section of the Act explicitly exempts them from its
operation. The initial section of the Act (Section 17-311 (a))
states: "The initial Commission of seven members is created
(Section 17-311) which has the power to conduct, review, or
reconsider any action of the Board of Directors of the
City of Columbia, South Carolina. This was not limited to the
Board of Directors and the U. S. Court of Appeals. The Commission
consists of seven members appointed by the President and has the
power among other things to act against officers named upon "conduct
which is inconsistent with the administration of the Government or
brings the judicial office into disrepute." (Section 17-311 (b)).
This open-ended power can of course be used for many purposes.
Moreover the decision of the Commission is only appealable to a
court of appeals which is the same as the U. S. Court of Appeals.
(i.e., Warren Burger) (Section 17-311 (c)). The new U. S. Court of
Appeals has full power to review decisions of the city council,
the mayor, and other municipal agencies. (Section 17-311 (d)).
The section of the Bill (Section 17-311 (e)) provides that
upon the commission of a third felony, a person can be subjected
to the Federal Government's jurisdiction. (Section 17-311 (f)).

New provisions allow all sorts of appeals by the prosecution from adverse decisions in criminal cases -- something which is almost universally forbidden by the rest of the states. Section 23-104(a) allows the prosecution to appeal at anytime during a trial (an interlocutory appeal) of any decision of the Court ~~/~~ suppressing or otherwise/ forbidden the use of illegally obtained evidence. Subsection (c) in unabashed, wide open terms, states that the prosecution can appeal from everything but an acquittal by a jury. Moreover subsection (d) states that the prosecution can take an interlocutory appeal from any legal question while ~~at~~ ^{the} trial ~~for~~ is in progress.

~~Section 23-109~~ ^{is allowed} allows the Attorney General to assign any special investigators to the U. S. District ~~for~~ Attorney, who are therefore invested with the same general police powers as the metropolitan police itself. This of course means that the Attorney General can literally have Federal agents policing under full powers the entire District of Columbia.

Section 23-522 (c)(2) -- ~~the~~ ⁴ so-called no knock provision -- states that policemen, if they have reasonable cause to believe that their person or the person of another might be in danger or that evidence might be destroyed can enter a person's home or any place else without identification and ~~section 23-524~~ (a)(2)(3) states that he may make his entrance with all force necessary to achieve his objective regardless of any resistance by the homeowner or the person in the building. ~~Subsection (c)~~ moreover states that the policeman can seize anything that ~~may~~ ^{evidence or might be} used in any way connected with any crime, regardless of whether it was indicated in the warrant or not or whether this particular ~~crime~~ crime for which

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Section 23-522 (c)(2) -- ~~the so-called no knock provision~~ -- states that policemen, if they have reasonable cause to believe that their person or the person of another might be in danger or that evidence might be destroyed can enter a person's home or any place else without identification and ~~section 23-522 (e)(2)(3) states~~ that he may make his entrance with all force necessary to achieve his objective regardless of any resistance by the homeowner or the person in the building. ~~Moreover~~ ^{moreover} states that the policeman can cease anything that ~~may~~ ^{evidence or might be} used in any way connected with any crime, regardless of whether it was indicated in the warrant or not or whether this particular ~~crime~~ ^{crime for which}

Further

4

Section 23-562 (a) states that a policeman does not even have to have the warrant with him as long as he shows it to the arrested person "as soon as possible." Section 23-581, adds to stating the broadest possible version of the normal arrest without warrant powers of a policeman adds that a policeman may ~~arrest~~ arrest without a warrant any person "whom he has probable cause to believe ... is about to commit ... the following offenses:

~~(The following)~~

(Then follows a long list of offenses relating to the protection of property such as larceny, unlawful entry, receiving stolen goods, burglary, unlawful use of vehicle, ETC,).

Finally, Section 23-582 largely destroys the ~~centuries-old~~ centuries-old right of citizens to make arrests. Citizens arrests are restricted to offenses committed in the citizens presence or offenses which are felonies or the above listed offenses related to the protection of property. Moreover, in direct contradiction to universal as well as ancient ~~Anglo-American~~ Anglo-American law the person making a citizens arrest is required to take the arrested person to a law enforcement officer, not ~~to~~ to a community magistrate or judge. advised

~~In my judgement, this Bill will authorize the establishment of a police state in the District of Columbia and further legislation~~ In my judgement, this Bill will authorize the establishment of a police state in the District of Columbia and further legislation ~~for that purpose would be unnecessary and superfluous.~~ for that purpose would be unnecessary and superfluous.

Section 23-282

~~Section 23-282 (e) states that a policeman does not even~~

have to have the warrant with him as long as he shows it to the arrested person "as soon as possible." ~~Section 23-282, adds to~~ stating the broadest possible version of the normal arrest without warrant powers of a policeman adds that a policeman may arrest without a warrant any person "whom he has probable cause to believe ... is about to commit ... the following offenses:

~~(1) knowingly~~

(Then follows a long list of offenses relating to the protection of property such as larceny, unlawful entry, receiving stolen goods, burglary, unlawful use of vehicle, etc.).

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centuries-old right of citizens to make arrests. Citizens arrests are restricted to offenses committed in the citizens presence or offenses which are felonies or the above listed offenses related to the protection of property. Moreover, in direct contradiction to universal as well as ancient ~~principles~~ the person making a

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